

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

RELIABLE AMBULANCE SERVICE OF §
LAREDO, INC., §

Plaintiff, §

VS. §

SYLVIA MATHEWS BURWELL, §

Defendant. §

CIVIL ACTION NO. 2:14-CV-112

**ORDER GRANTING MOTION FOR ENTRY OF JUDGMENT
AND DENYING WITHOUT PREJUDICE MOTION FOR EAJA FEES**

Pending is Plaintiff's motion for entry of judgment, seeking judgment on the merits as well as EAJA fees (D.E. 29). The Secretary filed her response on July 6, 2015 (D.E. 30). The Secretary did not brief or oppose the amount requested by Plaintiff as Medicare reimbursement for ambulance fees to transport the patient; rather the Secretary argues only that the motion for EAJA fees is both excessive and premature. According to the Local Rules for the Southern District of Texas, failure to file a response is taken as a representation that a party is unopposed to the granting of the relief requested. LR7.4.


Accordingly, Plaintiff's motion for entry of judgment on the merits (D.E. 29) is GRANTED. Judgment in favor of the Plaintiff in the amount of Thirty-Eight Thousand, Seven Hundred Ninety-Six Dollars and no cents (\$38,796.00) is entered.

The Secretary correctly argues that the request for EAJA fees pursuant to the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412, is premature. The Secretary has sixty (60) days from the entry of final judgment to file a notice of appeal. Fed. R. App. P.

4(a)(1)(B). The statutory thirty-day time period to file an application under EAJA does not begin to run until the sixty-day time period for filing an appeal has passed. *Melkonyan v. Sullivan*, 501 U.S. 89, 102, 111 S.Ct. 2157, 2165 (1991); 28 U.S.C. § 2412(d)(1)(B). The motion for fees and expenses pursuant to EAJA is denied without prejudice.

Because the court may have misled the parties by requiring that the Plaintiff file its request for attorney's fees at the time the motion for judgment was filed (*See* D.E. 26), the Plaintiff may, when the judgment becomes final, simply file a motion adopting and re-urging its earlier motion for EAJA fees and the Secretary may re-urge her response.

ORDERED this 6th day of August, 2015.


B. JANICE ELLINGTON
UNITED STATES MAGISTRATE JUDGE